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C O N F I D E N T I A L SECTION 01 OF 02 KABUL 000324

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DEPT FOR SCA/FO DAS GASTRIGHT, SCA/A
STATE PASS TO USAID FOR AID/ANE, AID/DCHA/DG
NSC FOR AHARRIMAN
OSD FOR KIMMITT
CENTCOM FOR CG CFC-A. CG CJTF-76 POLAD

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SUBJECT: CLARIFICATION ON PARLIAMENTARY DECLARATION ON
AMNESTY FOR FORMER MUJAHIDEEN

REF: A. (A) 06 KABUL 5931
 1B. (B) 06 KABUL 5825
 1C. (C) 06 KABUL 5939
 1D. (D) 06 KABUL 5965
 1E. (E) 07 KABUL 0229

Classified By: DCM Richard Norland for reasons 1.4 (B) and (D)

11. (U) SUMMARY. Several media outlets are reporting a decision on Wednesday, January 31, by the Afghan Wolesi Jirga (Lower House) to approve a declaration which would provide protection from prosecution for all the political and opposition elements that were involved in war with each other over the past two and a half decades. The declaration defends those who fought for Afghanistan's independence from recent foreign invasions and calls for amnesty for individuals who join the National Reconciliation Process and who respect the constitution and other laws of Afghanistan. Contrary to several press reports, while the declaration does extend the offer to any anti-government elements that are prepared to reconcile, it does not make an offer specifically to the Taliban. Some members of Parliament have voiced their opposition, questioning whether the Parliament has the authority to grant such amnesty to warlords. At this point, there is considerable confusion about whether the document should be treated as a law, a charter, or a resolution and the legal implications of each. It remains to be seen whether it must also be approved by the Meshrano Jirga (Upper House) and President Karzai to be considered legally binding.
END SUMMARY.

12. (U) The declaration is seen as a response to recent calls for a more assertive program of transitional justice. These include the recent Human Rights Watch report which called for the prosecution of a number of former mujahideen leaders who now serve in the parliament, including Abdulrab al-Rasul Sayyaf and Burhanuddin Rabbani. The 12-article "Charter of Immunity and Reconciliation" defends mujahideen leaders as defenders of their homeland (article 1),

grants immunity to all political factions involved in Afghanistan's past two-and-a-half decades of war who reconcile (articles 2 and 4), and establishes a special Parliamentary committee to oversee the opportunity for all anti-government elements to join the national reconciliation process, or PTS (article 7). Article three rejects the Human Rights Watch recommendation (reftel A). Article 9 states opposition to any plans to place mines or barbed-wire fences along the Pakistani border, calling instead for the destruction of training, funding and equipping centers for terrorists.

¶13. (U) Article 12 states that, "The Charter of National Reconciliation is approved and enforced," but there is considerable confusion about whether the document should be treated as a law, a charter, or a resolution and thus if and how it might be enforceable. While currently referred to as a "charter", there is no legal precedent for any "charter" ever being approved or enforced by the National Assembly. It is also unclear to the National Assembly's legal office whether the charter has to go to the Upper House and the President for approval to become legally binding. A temporary commission of nine parliamentarians, including Hajji Mohammed Mohaqeq, Noorulhaq Olumi, and Salih Mohammed Registani, drafted the charter.

¶14. (U) Some Parliamentarians left the plenary debate on this decision in protest. They maintain that Parliament does not have the authority to grant such amnesty. Other Parliamentarians point out that,

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according to Shari'a law, forgiveness is up to the people and cannot be legislated. Some interpreted the document as a reaction to pressure - particularly from Human Rights Watch - to speed the implementation of transitional justice as outlined in the National Plan for Truth, Justice, and Reconciliation (reftels A, B). GOA Army Chief of Staff Rashid Dostum and Parliamentarians Abdulrab al-Rasul Sayyaf and Burhanuddin Rabbani see such calls for transitional justice as a masked plot to remove them from power (reftels C, D). However, at this stage it is unclear what role, if any, Parliamentarians Sayyaf and Rabbani played in the drafting of this document.

¶15. (U) COMMENT: The statements in this document are largely consistent with President Karzai's offer of reconciliation to anti-government elements (reftel E). They reflect the broad determination of the Afghan body politic not to allow outsiders to determine the pace of reconciliation or whether particular warlords should be prosecuted. Post will follow developments of this Parliamentary decision but stresses that at this point, its enforceability remains doubtful.

NEUMANN